

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4061 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL PARBAT KANJI

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR VAKHARIA for MR K.G.VAKHARIA
for the Petitioners

Ms.Hansa Punani AGP for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 13/04/99

ORAL JUDGEMENT

The petitioners have challenged the order made by the State Government on 30.11.85 u/s 211 of the Bombay Land Revenue Code cancelling the NA permission which was granted on 2.11.82 to the petitioners as also a show cause notice dated 25.6.85 pursuant to which said order was passed.

#. The petitioners were granted NA permission in respect of 2 Acres and 13 Gunthas of land of survey no. 51/1/part situated in village Nana-angia, Taluka Nakhatrana, District Kutch. The NA permission was granted for the purpose of constructing houses for residential purpose. Various conditions were attached with the permission. A common plot was required to be maintained and the required margin of land was to be kept open.

#. On 25.6.1986 the order granting NA permission was sought to be taken up in revision u/s 211 of the Code and in that show cause notice the grounds on which it was proposed to be revised were two fold viz. that the required common plot was not kept in the middle of the land and further that requirement of 10 mtrs. was not kept in the lay out plan and breach was committed of the Ribbon Development Rules thereby. The petitioners responded to the show cause notice by their reply dated 30.10.85 pointing out that all the plots were sold out and in many of the plots constructions were already put up by the purchasers. It was also explained that sufficient space was kept open for common purposes besides the common plot itself and that a total area of 984 sq.mtrs. was available for common use which included the common plot of 734 sq.mtrs. Details regarding internal roads etc. were also given and it was denied that there was breach of Ribbon Development Rules.

#. The revisional authority however, came to a finding that the common plot of requisite area was not ear marked and that there was breach of the Ribbon Development Rules. The NA permission was therefore, cancelled.

#. Admittedly NA permission was granted on 2.11.82 and the show cause notice for cancelling the same was given on 25.6.85 i.e. 2 years and 9 months after the grant of NA permission. In between the plots were sold away and constructions were put up as stated by the petitioners in their reply. Though there is no period prescribed under section 211 of the Bombay Land Revenue Code, the power there under must be exercised in reasonable time as held by the Supreme Court in State of Gujarat vs. Patel Raghav Natha & ors. 10 GLR 992 on which reliance was placed by the petitioner. That was also a case where the permission which was granted on 2.7.60 for non agricultural purposes came to be cancelled on 12.10.61 i.e. more than a year after the order in exercise of the revisional powers was made under section 211 of the Code. In that context the Supreme Court observed that Section 65 of the code indicates the length of the reasonable

time within which the Commissioner can act under section 211 of the code. Under section 65 of the Code, if the Collector does not inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted. The Supreme Court therefore observed that section 65 shows that a period of 3 months was considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. It was held that reading sections 211 and 65 together, the revisional powers must be exercised within a few months from the date of the order of the Collector. A lapse of more than a year in that case was considered unreasonable and it was held that the order which was made more than a year after the permission was granted was passed too late. The facts indicate that after the permission was granted in the year 2.11.1982 the land was plotted and plots were sold out and construction was also made thereon. Therefore, the show cause notice which was issued after a period of two years and nine months for initiating proceedings under section 211 of the Code was issued much beyond reasonable time. In such matters, as held by the Supreme Court the reasonable time should be a few months after the grant of such permission. Therefore, the impugned show cause notice and the impugned order cannot be sustained and are hereby set aside. Rule is made absolute accordingly with no order as to costs.